FILED
JUL 30 1991
OFFICE OF THE CLERK

(2.)

No. 91-44

In The

Supreme Court of the United States

October Term, 1991

STEVEN I. RADLOFF AND BARBARA RADLOFF,

Petitioners,

vs.

FIRST AMERICAN NATIONAL BANK OF ST. CLOUD, N.A.; and FIRST FARM CORPORATION, INC. OF ST. CLOUD, a Minnesota Corporation,

Respondents.

Petition For Writ Of Certiorari To The Minnesota Court Of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Bank's demand that Borrower accept a particular business manager or financial adviser constitutes a usual and customary banking practice under 12 U.S.C. § 197 (anti-tying provision of Bank Holding Company Act).

2. Whether creditor's foreclosure of security agreement under state law allowed by United States Bankruptcy Court violates the Banking Holding Company Act. (Never raised below.)

3. Whether claim of debtor against creditor bank post-bankruptcy without disclosure of the claim in the bankruptcy proceeding can be estopped (Judgment was ordered on other grounds).

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TABLE OF AUTHORITIES

None

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RESPONDENT'S BRIEF IN OPPOSITION

Respondents respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Minnesota Court of Appeals' decision in this case.

This Brief is filed for purposes of clarification of issues and facts.

OPINION

Petitioners seek a Writ of Certiorari to review the decision of the Minnesota Court of Appeals entered April

24, 1991 (unpublished) cited at page A6 of the Petition. The Minnesota Supreme Court denied Petitioners' request for review on March 27, 1991 (cited at page A3 of the Petition), and denied Petitioners' Motion for Reconsideration of the denial of the request for review on April 18, 1991 (cited at page A1 of the Petition). Judgment was entered against Petitioners by the Minnesota Court of Appeals on April 24, 1991 (cited at page A4 of the Petition).

STATEMENT OF THE CASE

Petitioners and Respondents had a longstanding banking relationship in Petitioners' operation of a farming business in Central Minnesota engaged in raising various crops. Due to Petitioners' deteriorating financial condition, including inability to repay annual operating loans made by Respondents, Respondents and other lenders refused to advance additional credit to Petitioners. Petitioners filed bankruptcy under Chapter 11 seeking a reorganization, which was later converted by the Bankruptcy Court to a Chapter 7, resulting in the liquidation of Petitioners' assets.

In the course of bankruptcy proceedings, the Bankruptcy Court provided Respondents with a lift of the automatic stay and Respondents proceeded to foreclose on their collateral under state law.

Following the bankruptcy proceedings, Petitioners commenced this action against Respondents alleging multiple federal and state law claims arising out of the

credit relationship. These claims include the claims disposed of by the trial court in its Order and Memorandum cited at page A14 of the Petition, and the Court of Appeals' decision cited at page A6 of the Petition, and many more which were disposed of by the trial court in an earlier Order and still more which were withdrawn by petitioners during pretrial, as noted by the trial court cited at page A15 of the Petition.

In the final analysis, the trial court and the Court of Appeals simply held that Petitioners had developed no evidence to go to trial on any of the many allegations against Respondents.

The Petition is hard to follow and therefore, hard to refute. The destruction of property referred to in the Petition refers to part of the assets in the bankruptcy estate of Petitioners which by virtue of foreclosure under state law were the property of Respondents, as concluded by the trial court in its memorandum cited at pages A34, A31 and A32 of the Petition, and by the Court of Appeals in its decision cited at page A9 of the Petition.

The only pertinent facts relating to the anti-tying provisions of the Bank Holding Company Act involve the Respondents' demand that Petitioners engage a specific business manager, Mr. Ambuehl (referred to in the Petition) as a condition to additional extension of credit. This occurred about six weeks before Petitioners' voluntary bankruptcy filing.

The questions concerning whether the Respondents "controlled" Petitioners in this banking relationship so as to create a fiduciary obligation under state law is a state law question, not a federal law question. Moreover, the

trial court found no evidence of control as noted in its memorandum cited at page A39 of the Petition; a determination which the Minnesota Court of Appeals found no reason to reverse, as noted in its decision cited at page A12 of the Petition.

The rest of the Statement of the Case recited in the Petition contains unintelligible analysis.

REASONS FOR DENYING THE WRIT

I. Introduction.

A writ in this case is neither necessary nor warranted because there exists no special and important reasons for the exercise of the Supreme Court's discretionary power of review. The Minnesota trial court and Court of Appeals correctly decided the federal law questions without conflict with existing decisions of other state high courts or federal appeals courts or the Supreme Court of the United States. There are no conflicts with existing law and there are no important issues which need to be resolved by the United States Supreme Court.

II. There is no Substantial Federal Question.

The only question of federal law involves the Bank Holding Company Act anti-tying provision and relates to whether or not a financial institution's insistence of financial management by a debtor constitutes a tied service to the underlying extension of credit. Numerous cases, some federal and some state, have held that it is not. These cases are cited by the trial court in the memorandum cited at pages A36, A37 and A38 of the Petition, and by

the Court of Appeals in its decision cited at page A11 of the Petition. That question is one depending on the facts in a given situation and certainly is not one that needs to be decided by this Court.

The question of whether the United States Bankruptcy Act precludes or estops later assertion of state law claims by a discharged debtor against a creditor when the claims were not disclosed during the bankruptcy proceedings, has been decided by federal courts with no conflict known to this writer. Furthermore, that determination was made by the trial court and the Court of Appeals in the alternative, having been made unnecessary by each Court's earlier determination that all state law claims lacked evidence to go forward to trial in any event.

The question of whether creditors' state law remedies violate the Bank Holding Company Act was never raised in the litigation. It wasn't pleaded; it wasn't discovered; and it was never alleged at any time. Without more specificity, it is inappropriate to present that issue to the United States Supreme Court.

III. There is no Conflict with any Decision of the Federal Circuits.

No determination made by the Minnesota Court is in conflict with any decision of any federal court. The attempt made in the Petition to develop some kind of conflict is tortured and completely without merit.

CONCLUSION

Petitioners' penchant for stating their claims in grandiose terms, raising significant questions of statutory interpretation and constitutional law have plagued this case from the beginning. The case presents convoluted, duplicative and overlapping state law claims of every nature and description. The evidence developed by Petitioners after two and one-half years was determined by the Minnesota courts to be wholly insufficient to prove any of these grand claims.

The Petition should be denied.

Respectfully submitted

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